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REPORT

OF THE

COMMITTEE OF THE BOARD OF OVERSEERS

OF

HARVARD COLLEGE

IN RELATION TO THE

THEOLOGICAL DEPARTMENT,

&c. &c.

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REPORT.

THE Committee of the Board of Overseers of Harvard College, who were instructed by a vote of the Board, passed 7th February last, to consider the expediency of disconnecting entirely the Theological Department from this College, and of providing that there shall be no preaching to the students in the Chapel, or religious exercises, other than morning and evening prayers; also, that if said committee shall be of opinion that it is expedient to sunder the relation now subsisting between the College and the Divinity School, they be farther instructed to report what arrangements ought to be made to separate the funds, which have been contributed in aid of the Theological Department, from the other funds of the College, so as at once to render the College a State Literary Institution, and to do ample and entire justice to each and all of those, who have contributed towards the endowment and support of the Divinity School, respectfully submit the following Report.

The two subjects embraced in the vote being entirely distinct, we have first considered the subject respecting a separation of the Divinity School from the College.

There has been, from early times, some provision for instruction in Theological Science at the College; but there has been no separate or distinct department for the promotion of theological education, until a comparatively recent period. The Hollis professorship was established more than a century ago. The fund was small, however, not exceeding about \$2,600; and a few small additions from other sources, of about \$1,300,

made the fund about \$4,000. The income from this fund, estimated at 5 per cent., is about \$200.

Prior to 1815, there were usually a few resident graduates, students in divinity, at the College, who derived some aid for their support from the Hopkins fund, and who pursued their studies under the direction of the Hollis Professor of Divinity, reading dissertations occasionally in the Chapel.

The great increase of this establishment took place in consequence of applications to the public, made for that purpose, by the President and Fellows of Harvard College, commencing in December, 1815, and resumed from time to time, for several years. It was a call on wealthy and benevolent individuals, to contribute funds for the promotion of Theological Education in Harvard University; and large contributions were made, in conformity with that call. A voluntary Society was established, by the contributors and benefactors, under the name of the "Society for the promotion of Theological Education in Harvard University," which afforded effectual aid in raising funds for the purpose, proposed by the College, and declared by the title of the Society. The funds thus raised were paid from time to time into the College treasury. After some changes in its organization, a constitution was adopted by this society in November, 1824, which provided for the appointment of a Board of Directors, and five trustees, to act with the corporation, in matters connected with the Divinity School. This constitution contemplated, that moneys given to the Society, which had not then been paid over to the College Treasurer, and such as should be afterwards given, unless directed by the donors to be paid over to the College Treasurer, should be retained by the treasurer of the Society and administered by its directors. This constitution also contemplated, that if, at any time after its adoption, the Society should think fit to appropriate the funds, thereafterwards to be collected, to a Theological Institution, to be disconnected from Harvard College, with the consent of the Directors, and of the President and Fellows of Harvard College, such funds might be so appropriated.

By the terms of the constitution of this voluntary society, it is left doubtful whether the Theological Institution, after its

adoption, would have been under the control and direction of the Directors of this society, or of the President and Fellows of the College, subject to the revision of the Overseers. It provided that the Directors should take the general oversight and superintendence of the Institution, and make regulations for the admission, instruction, and discipline of the students; such regulations to be submitted to the Corporation of Harvard College, for their assent, in all cases wherein, by the Constitution of the University, such assent may be requisite. These provisions left it doubtful whether the institution was to be a department of the College, its statutes to be approved by the Overseers, and the appointment of its professors confirmed by them; or whether it was to be a separate institution under a distinct government.

By an act of the Legislature, passed 15 Feb., 1826, this society was incorporated under the name of the Society for the promotion of Theological Education at Cambridge, for the purpose of establishing and maintaining a Theological Institution to assist young men of competent talents, pure morals and piety, in preparing themselves for the Christian ministry. In this act, the whole power of managing the institution was apparently vested in another corporation, in which the College government had very little share. There was a provision which recognized the power of the College over funds before that time contributed and paid over to the College Treasurer, by providing that all such moneys should be appropriated by the five Trustees of the new Society and the President and Fellows of Harvard College, constituting one board. It also contained the same provision, that the doings of the Society should be submitted to the Corporation of Harvard College for their approbation, in all cases wherein, by the Constitution of the University, such assent or approbation might be requisite. This clause did not define or state what doings would so require the assent of the College government, and therefore left it entirely doubtful what would be the practical effect of such a provision. This act contained a clause providing that it should take effect and be in force when the President and Fellows of Harvard College should assent thereto.

After long deliberation upon a report of a committee, the Corporation declined assenting to this act. The reasons are fully stated in that report, and they result in this—that the adoption of this act would either place the institution under two independent governments, having no common head, to the great detriment of the institution; or the power of the new government must be absolute in all things, in which case, it would be entirely beyond the control of the Overseers and of that board, and cease to be, in any sense, a part of the College; and that such a course would be contrary to their duty, and would defeat the declared object of the contributors to the theological fund. This vote of the Corporation, declining to assent to the act of incorporation, was passed 24 May, 1827.

The connection between the voluntary society for the promotion of Theological Education and the Government of the College, was terminated in Nov. 1830. The College, on great deliberation, established a Theological Faculty, upon a plan satisfactory to the society, under a series of statutes, which were afterwards submitted to and approved by the Overseers.

By a communication, made by the Directors of the society to the Corporation, Nov. 18, 1830, it was proposed to transfer all their funds to the President and Fellows of the College, upon certain terms specified; which proposal was accepted by the College, upon the terms expressed. A deed to this effect was afterwards duly executed, upon the trusts therein specified, some of which were as follows:—

1. To be applied generally to the promotion of Theological Education, this being the first and principal object proposed and intended by the donors of those funds; and it is therefore made the duty of the President and Fellows of said College to appropriate the same to assist young men of competent talents, pure morals and piety, in preparing themselves for the Christian ministry, and provide for them the best instruction which the said funds will admit, it being understood, according to the express provision attached to the said donations, by the contributors thereof, that every encouragement shall be given to the serious, impartial, and unbiassed investigation of Christian truth; and that no assent to the peculiarities of any denomina-

tion of Christians, shall be required either of the instructors or students.

2. That all the funds collected by the said Society or by their means, before the change made in their government in 1824, are to be applied by the President and Fellows, to the promotion of Theological Education in Harvard College, according to the will of the donors, as expressed in the then existing rules and constitution of the Society.

3. It having been provided, in the 10th article of the Constitution established in Nov. 1824, that the Society, with the assent of the Directors thereof, and of the President and Fellows, might, at any time thereafter, if they should think it best, appropriate the funds thereafter to be collected to a Theological Institution disconnected from Harvard College; the said Society, with the assent of the Directors, do hereby, so far as in them lies, authorize such an appropriation of the funds collected since the time last above mentioned, whenever the said President and Fellows shall think it best so to appropriate the same, the funds embraced in this article being those specified in the four items of property first above mentioned as assigned by this instrument.

4. By this, the funds thus transferred are charged with the payment of certain debts and obligations of the Society, specified.

The items alluded to in the 3d trust, declared as above, were as follows :—

1. The interest of the Society in Divinity Hall and House attached thereto, amounting to	-	-	\$14,827 57
being sums collected by the Society and appropriated towards the erection of said buildings.			
2. The Furniture therein, estimated at	-	-	2,027 08
3. The Library therein, cost	-	-	548 38
4. Cash,	-	-	825 98

Whether, under the trust expressed in this deed, this sum of about \$18,000 might be withdrawn from the Divinity School of the College, and applied, should they think it expedient, to

the establishment of a separate institution, is not, perhaps, material to consider now. The view taken of it, at the time, by the Corporation, seems to have been, that, by applying this part of their funds towards the erection of a building for the Divinity School, for the College, on the land of the College, the balance of the cost being paid by the College, from funds granted to the College in trust for that purpose, the Society have actually appropriated the fund ; so that, the cautious and hypothetical declaration of a trust to that effect, would not place it in the power of the College Government, consistently with their duty to the donors, so to withdraw the sums, thus contributed towards the erection of a Divinity Hall for the College, and purposes connected therewith, to another and distinct institution.

But we have not thought it necessary to investigate this question more particularly, because it is manifest that it affects a small part only of the moneys raised by the voluntary Society ; and unless, therefore, all the residue of the sums so raised, together with large donations from other sources, paid to the Corporation, in trust, to promote instruction in Theology in Harvard College, as a part of the system of university education, can also be detached ; a Theological School or department must still continue ; and the withdrawal of a small part of its funds, would not accomplish the object of the proposed separation.

One other donation was afterwards made to the corporation, for the aid and support of the Divinity School, under these circumstances. After the former act of incorporation had been rejected, and the voluntary Society for the promotion of Theological Education at Harvard University had transferred their funds to the Corporation, another Society was incorporated, by an act passed June 21, 1831, under the name of the "Society for promoting Theological Education." Although this Society had no reference, either in its title or its provisions, to Harvard College or to Cambridge, yet it consisted mostly of persons who had been actively engaged in the proceedings of the former Society, and had the same objects in view. This Society was organized under the act, and has, from time to time, afforded some aid to indigent students in Theology at the Di-

divinity School. In 1840, when it was thought expedient to place the Divinity School upon a more permanent foundation, and an appeal was made to the public for that purpose, this last named Society, acting in concert with the Berry Street Conference, raised and paid over to the Corporation the sum of ten thousand dollars. This donation was accompanied with this condition :—"and provided, also, that in case the funds transferred by the Society for promoting Theological Education, by an instrument dated December 3, 1830, shall ever be appropriated to the support of the Theological School, and separate from the College, the money now contributed shall go with said funds."

Of course, the power of the College to make a transfer of these funds, will depend upon the considerations already expressed in regard to the hypothetical trust declared by that deed.

Many other large donations have been made, both before and since the above mentioned transfer of funds by the Society, &c., most of which are, in terms, made to the President and Fellows of Harvard College, for the use of the Divinity School, or other equivalent expressions of trust, for the promotion of Theological Education in the College.

Some few donations were made, principally, through Dr. Henry Ware, Jr., after 1831, which were expressed to be, to the Divinity School, or for the Divinity School, or some equivalent expression.

That this was understood by Dr. Ware, Jr., to be a gift to the Corporation, in trust for the promotion of Theological Education in the College, is manifest from the fact of his communicating notice of them to the Corporation, and paying the money to the College Treasurer. But it appears to us also, that he was right in considering this to be the true construction of the terms of such gifts.

There has been no body politic and corporate, under the designation of the Divinity School, or Theological Institution, or other similar designation, capable in law, of taking and holding property, in trust or otherwise. The act for incorporating a Society for promoting Theological Education *at Cambridge,*

never went into effect; and the Society for promoting Theological Education in Harvard University was never incorporated. But it is a well established rule, that a donation for the promotion of any charity,—and the advancement of education in any department, is regarded in equity as an object of charity,—and the object and purpose of the charity is clearly designated, and there be a person or corporation charged with the administration of such charity, and capable, in point of law, of taking and holding such property, and designated by any name or description, indicating that it was in the contemplation of the donor, it will be deemed a gift to such person or corporation, in trust, to be applied to the accomplishment of the purpose thus designated.

We therefore consider all gifts and grants made to the Divinity School at Harvard College, or at Cambridge, or the Theological Institution at Cambridge, or for the promotion of Theological Education at Harvard College, or at Cambridge, or any equivalent expression, indicating this object, to be gifts to the President and Fellows of the College, in their corporate capacity, in trust, for the purpose expressed by such designation. These funds, then, all stand on the same foundation, with the questionable exceptions of a comparatively small portion of them, above stated; and they are either in express terms, or by necessary implication, donations to the College government, in its corporate capacity, to be held in trust and applied conformably to the constitution and laws of that institution, and subject to the same superintendence and revision of the Board of Overseers, as they are under in regard to funds appropriated to promote improvement in all branches of knowledge and all departments of education established therein, to the advancement of Theological Science and the promotion of Theological Education, as branches of education, within the scope and purposes of an University.

In regard to the questionable exceptions above alluded to, we have said that we have not thought it necessary to express an opinion, whether those funds might be alienated and appropriated to the establishment of a separate institution, or not; and the reason is, because it forms no very large proportion of

the whole fund now realized, and would not determine the question, whether a Theological Department shall continue connected with the College or not. If the other large funds, not subject to this exception, must continue to be held by the College, and to form the foundation of a Theological Institution, as a department of University Education, then the withdrawing of this part of the fund, would have no tendency to separate the Theological Institution from the College. And it adds to the strength of this consideration, that other large contributions have been since made, directly to the College. One of them has been made by the will of Benjamin Bussey, Esq., which is not yet realized in possession, because it is at present charged with several annuities, but which it is understood will ultimately afford a large income. The will provides, that one half the income of the property so conveyed to the President and Fellows of Harvard College, shall be annually appropriated, one half to the encouragement and promotion of Theological Education, and the other half to the encouragement and promotion of legal education in said College, by the endowment of professorships, &c. If, therefore, the excepted property could be withdrawn, consistently with the terms of the trusts, under which it is held, unless the whole could be so withdrawn, the effect would not be to detach and separate the Divinity School or Theological Department from the College, but simply to lay the foundation for a separate and coëxistent institution.

Regarding these donations then, as made to the College Government, in its public, corporate capacity, the question recurs, what are the rights, duties and obligations of the College in regard to them?

It is a public body, established in early times, recognized and cherished by each successive government of the Colony, Province and Commonwealth, confirmed by its fundamental laws. This body is under the superintendence and control of a Board of Overseers, to whose revision all important measures and establishments are submitted, and who have a negative upon all appointments of officers, appointed for instruction or government within the College. The College Government, as a public institution, thus organized and guarded, is permanent in its na-

ture, and made so, to accomplish its objects for the future, as well as the present, and entrusted with the great public interests of instruction and education in all departments of knowledge. Amongst these objects, are the advancement of Theological Science, and the promotion of Theological Education. For any or all these purposes, they are invested with a power to take and hold property in trust and perpetuity; to apply and appropriate the property or the income thereof to this object, according to the will of the donors. Donations having been made to this body, and accepted by them, upon these trusts, for the purpose, not only of founding, but of perpetuating a department within the College for the promotion of Theological Science as a branch of University Education, the Committee are of opinion, that the College Government, and all those entrusted, for the time being, with the administration of its affairs, are under a legal, moral and conscientious obligation to retain the property so given, and faithfully to apply it to promote the objects for which it was entrusted to them; and that they have no power, in law or equity, to transfer the property, and confide these trusts to any other person or corporation.

The Committee, therefore, are of opinion, and do report, that it is not expedient for this Board to make any recommendation to the Corporation, or to take any further order on the subject.

The Committee were also instructed to consider the expediency of providing "that there shall be no preaching to the students, in the Chapel, or religious exercises, other than morning and evening prayers."

These terms, perhaps, embrace a range of inquiry somewhat wider than was contemplated; but, as we understand it, the inquiry proposed is, whether it is expedient to discontinue public worship and religious exercises in the Chapel, on the Sabbath.

As full liberty is now allowed to all undergraduates, on a request to that effect, made to the College Government by themselves or their parents, to attend worship with any religious society in Cambridge, of any denomination, according to their own preference, there seems to be no occasion to adopt any

change, in order to secure greater freedom of conscience, or a wider latitude of choice in this respect, than is now enjoyed. It is, therefore, a question of expediency, in regard to those who have no particular preference in this respect.

In case the present system of religious exercises in the chapel, on the Sabbath, were discontinued, it would be for the College Government to adopt one of two expedients; either to leave the undergraduates to provide for themselves in this respect, and to go to such places of worship, in or out of town, as they please; or, for the Government to make some provision for them, and take measures to ensure their regular attendance.

We suppose it would not be regarded as consistent with that parental care, which the College Government are expected to exercise over a large number of young men, at a critical age, many of them coming from a distance, and necessarily removed, for the time being, from the care and control of their parents, to have no watch or guardianship over them on the Sabbath; nor would such a course be favorable to their own characters, nor to the character and discipline of the institution.

Should the College Government be required to provide a place of worship, for all that class of students, who have no preference of their own, and the case we are considering is that of such a class of students, it would not only be liable to the objection, that they must select the place of worship of some sect or denomination of Christians, but it might be inconvenient, if not impracticable, to provide for so large a number, with any congregation, and to make and enforce regulations suitable and sufficient to ensure the order, regularity and sobriety of deportment, befitting the place and the occasion.

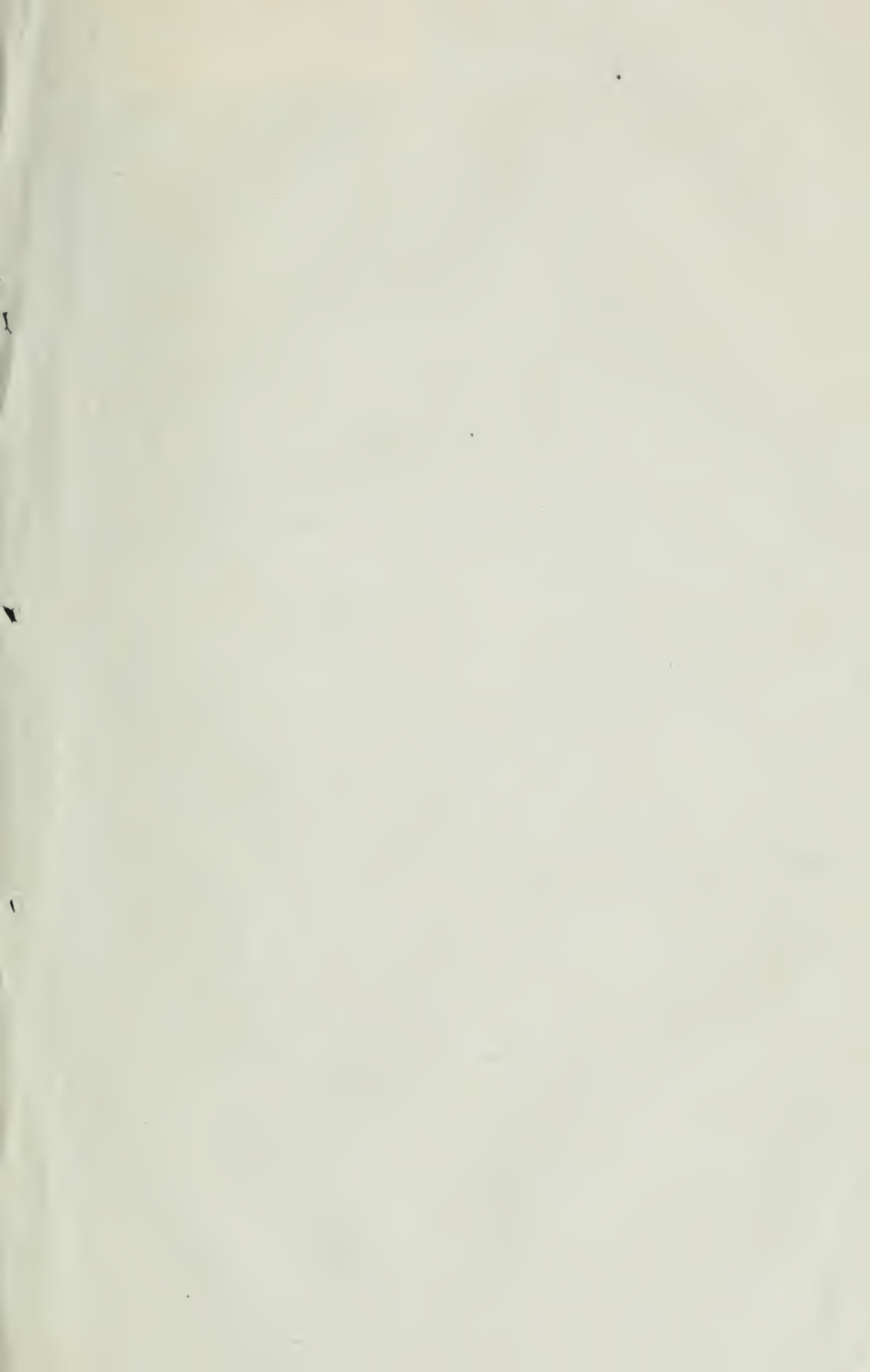
In regard to the relative benefits to the students themselves, of religious exercises in the Chapel, prepared and conducted with special reference to their age and condition, and to their habits of thought, feeling and injury, and that of attending, with a mixed congregation, as usually composed, there may be some room for doubt and difference of opinion. There are some obvious advantages in the present system; and if the religious services of the Chapel are rightly conducted and suitably adapted to the wants and condition of a body of young men, of nearly

equal age, of active and intelligent minds, they may be in a high degree instructive and edifying. Perhaps there would be some advantage of another kind, in uniting with a congregation in religious worship, where the services are adapted to affect the minds of a mixed audience of persons of both sexes, and of all varieties of age, condition, and degree of intelligence. In this aspect of the case, a wise decision of the question must, we think, depend very much upon the careful observation, and the experience of those, who are more immediately connected with the Government of the College. With these views, both of the practicability and expediency of the proposed change, the Committee are of opinion that it is not expedient for this Board to make any express recommendation to the Corporation, or to take any further order on the subject.

For the Committee,

LEMUEL SHAW.

BOSTON, *January* 6, 1846.



UNIVERSITY OF ILLINOIS-URBANA



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